IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 514 OF 2001

Smt. Rukmini Maruti Vacchaure ... Petitioners and ors.

V/s.

State of Maharashtra & Anr. ... Respondents

Mr. N.M. Ganguli for the petitioner.
Ms. S.M. Dandekar, AGP for respondent No. 1.
Mr. P.M. Jadhav with Mr. V.P. Sawant & Mr. N.R. Patankar for respondent No. 2.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 4th October, 2006

P.C.

. The petitioners who are widows of the employees of the erstwhile Haffkine Institute of the Government of Maharashtra have challenged the letter dated 19.10.2000 issued by respondent Nos. 2 and 3 i.e. Government Company called Haffkine Bio-Pharmaceutical Corporation Limited and respondent No. 3 Haffkine Training, Research and Testing Institute, whereby petitioners' claim of pension was rejected on the ground that their husband i.e. ex-employees of the Government undertakings who put in less than 10 years services were not eligible to pension and therefore revision of 1/3 computed value of the pension was also rejected and hence present

writ petition.

2. The petitioners are widows of employees of erstwhile Haffkine Institute, Bombay. Those employees have joined Government service between period 08.03.1966 and 01.12.1969. The details are provided in Exhibit "A" to the petition. The petitioners were requesting the respondents from time to time for considering their claim of pension being heirs of ex-employees of Haffkine Institute. After the Government of Maharashtra Resolution dated 25.05.1997, whereby the Government has revised computed value of the pension to the Government employees, 15 years after they ceased to be in Government service. The petitioners' claim for pension was for a period of 15 years, in respect of the employees who transferred to and absorbed by the Corporation and Research Institute from 01.09.1975, to be reckoned from 01.09.1990. The respondents by impugned order communication dated 19th October, 2000 rejected said claim.

3. By notification dated 26th November, 1973, the Government has converted the Haffkine Institute, Bombay into two autonomous bodies, namely Haffkine Institute for Training, Research and Testing and

Haffkine Bio Pharmaceuticals Corporation Limited. The effective date was declared as 1st September, 1975. Relative clause (4) of Resolution dated 30th April, 1975 is as under:-

> "(4) On discharge from the Government service the Government servants concerned should be provided with effect from the said date, with an appointment to the corresponding and equivalent posts in the new Institute or Corporation, as the case may be in the same scale and allowance at present admissible to them. On such appointment their terms and conditions of service under the New Institute or Corporation should not be less favourable than their existing terms and conditions of service and in particular, their terms and conditions pertaining to their existing scales of pay and allowances, pensionary benefits, provident fund, leave, medical benefits, facility to continue in Government accommodation and other benefits shall be protected as specified in Appendix "A" to this G.R. However, such a protection shall not extent to matters pertaining to their future promotions, which will be governed by the rules and regulations made by their new employers. The service rendered by them under Government will count for their pensionary and all other benefits as if it was a service rendered under the new body."

4. Those Government servants were discharged accordingly. The respondent Government had sought option from all the members of the staff on the establishment of existing institute regarding their appointment under new institute or corporation on or

before 31st July, 1975. As reproduced above clause (4) of the notification dated 30th April, 1975, the terms and conditions for appointment of the staff of the Haffkine Institute was referred as part and parcel of the said circular. The relevant clause (5) of the said Appendix "A" to the circular dated 30th April, 1975 is reproduced as under:-

> "(v) The pensionary liability in respect of the service rendered under the Government by a permanent employee, who is eligible for pension, will be of Government and the said pension will be payable when the said employee finally retires from Haffkine Institute for Training, Research and Testing/Haffkine Bio-Pharmaceutical Corporation Ltd., on attaining the age of 50 years (if he was holding a gazette post) and 55 years (if he was holding a non-gazetted post), as per Government Resolution, Finance Department No. PEN 1067/49/67, dated 17th October, 1967 and PEN 1072/596 dated 25th April, 1973 or on superannuation.

5. The respondent has averred and relied upon the resolution Nos. PEN 1067/49/67, dated 17th October, 1967 and PEN 1072/596 dated 25th April, 1973 as referred above, in following words:

> "I say that Government Resolution dated 30th April, 1975 is very clear as regards to the entitlement of the pensionery liability of the permanent employees. The said G.R. is annexed as Exhibit "A" to the petition, however, it is incomplete. I say that as per clause (V) of Annexure

> "A" to the said Government Resolution the permanent employees who were working in the Government Department and rendered more than 10 years of service till 31st August, 1975 are eligible for pension vide G.R. F.D. No. PEN 1067/49/67, dated 17th October, 1967 & PEN 1072/596 dated 25th April, 1973. I say that the above criteria for the eligibility of pension is also mentioned in Maharashtra Civil Services Rules, 1982 (67) (b) which says that Government employee is eligible for the benefit of pension on completion of minimum 10 years of services. I say that in the year 1975 instead of MCSR Rules BCSR Rules and Government Resolutions were applicable but the criteria was same.

6. The relevant clause of Government Circular dated 17th October, 1967, reads as follows:

> "In cases where a government servant at the time of absorption has less than 10 years service and is not entitled to pension, the question of proportionate pension will not arise, he will only be eligible to proportionate service gratuity in lieu of pension and to death-cum-retirement gratuity based on length of service."

7. The respondents have further relied on circular/Government Resolution dated 28th April, 1981,

which contains the policy decision taken by the Finance Dept. regarding various pension schemes and the available criteria for the employees who have been permanently absorbed in public sector undertaking after abolition of the posts. The respondents submitted and stated that as per said resolution Clause VII (2), it was made very clear by the Finance Department that benefits of the pension will not be admissible to the families of those who absorbed before rendering 10 years qualifying service.

8. The respondents further averred and submitted in support of their action that date of appointment of late Mr. Tawde and Mr. Ahire were 15.11.1967 and 01.06.1967 respectively. Therefore, they were not entitled for the family pension. Based on this, the respondents started recovery proceeding of the said wrongly paid pension from the petitioners and action was initiated accordingly. The respondents further submitted that those employees who have received terminal benefit such as gratuity and death-cum-retirement benefits, were not eligible for pensionary benefit due to less than 10 years services with the Government, therefore their families/legal heirs are also not entitled for the pensionery

benefits as claimed.

9. In this undisputed position of facts and the Government Resolution and policy on record, in no way petitioners can claim continuation of the family pension as claimed in the present petition. The husbands of the petitioners who were employees of Haffkine Institute has admittedly not completed 10 years of service on 1st September, 1975. As per the Government Resolution dated 30th April, 1975, the effective date of bifurcation was 01.09.1975. As noted, the Appendix "A" to the said circular dated 30th April, 1975 refers to the Notification dated 17th October, 1967 and 25th April, 1979. The said notification itself provided that in cases where a Government servant at the time of absorption has less than 10 years of service, was not entitled to pension, the question of proportionate pension would not arise. He would only be eligible to proportionate service gratuity in lieu of pension and to death-cum-retirement benefits based on length of service. The petitioner’s husband therefore as appointed on 15.11.1967 and 01.06.1967 have admittedly not completed 10 years of service prior to 12.09.1975. This fact was well within their knowledge.

10. The respondents, therefore, by the impugned order dated 19th October, 2000 rejected their case in all respects. The reference was also made to Rule 67 (b) of the Maharashtra Civil Services Pension Rules, 1982, by observing that the employees of the Government undertaking who have put in less than 10 years in Government Service are not eligible to pension. It has been further observed that question of 1/3 computed value of the pension based on Government circular dated 26th May, 1997, also does not arise for the same reasons. Considering the Government Circular as referred above and in view of the undisputed position of non-completion of 10 years service on 01.09.1975 by the petitioners' husband, petitioners are not entitled to claim any benefit of pension. It was never intended at any point of time in any Government circular to make such employees of Haffkine Institute entitled for pension as claimed. The claim as well as challenge at this stage by the petitioners, in view of above Government Resolution is difficult to accept.

11. For the aforesaid reasons, the petition is dismissed. Rule discharged. No costs.

[F.I. REBELLO,J.]

[ANOOP V. MOHTA,J.]